

In June, 2008 President Bush signed the Heroes Earnings Assistance and Relief Tax Act (HEART Act) into law, and in February, 2009, the State of Delaware adopted this act into its Flexible Spending Account Plan Document. The Act is designed to help military personnel called to active duty who may otherwise forfeit dollars set aside in a health Flexible Spending Account. According to the Act, an employer (plan sponsor) may make a **cash distribution** of unused health FSA benefits to eligible reservists without disqualifying its cafeteria plan(s). This withdrawal is known as a Qualified Reservist Distribution (QRD), and there are certain caveats in place that must be met before they are allowed.

Those caveats are:

- 1) **The individual must be a “reservist”**, as defined in 37 U.S.C. Section 101, which means the individual must be a member of one of the following:
 - a. Army National Guard of US;
 - b. Army Reserve;
 - c. Navy Reserve;
 - d. Air National Guard of US
 - e. Air Force Reserve;
 - f. Coast Guard Reserve; or
 - g. Reserve Corps of the Public Health Service
- 2) **The individual is called to active duty for a period of 180 days or more or for an indefinite period.** The Office of Statewide Benefits must review the employee’s call or order to duty before granting an employee request for a distribution. If the order or call specifies that the period of active duty is either 180 days or more or indefinite, the reservist is eligible for a distribution – even if the actual period of active duty ends up being less than 180 days. By contrast, if the period specified is less than 180 days, qualified distributions would not be allowed (unless later orders or call-ups extend the period).
- 3) **The request for distribution is made during the period beginning with the order or call to active duty and ending on the last day of the plan year (or grace period, if applicable).** A reservist must request a distribution after the order or call to active duty, but before the last day of the plan year including the grace period.

Amount of distributions – the QRD is restricted to the amount actually contributed to the health FSA at the time of the request minus any reimbursements actually received. The eligible employee must complete a QRD form (found on the Statewide Benefits website), and the approved reimbursement amount will be processed through the State. QRDs are taxable, and will be included in the gross income and wages of the employee, and are subject to employment taxes. A QRD must be reported as wages on the employee’s W-2 for the year in which the QRD is paid to the employee.

This amendment to the plan is retroactive to June 18, 2008. If you were activated on or after that date for a period of six months or more who were/are enrolled in a health care FSA, please be aware of this new provision. Please refer any specific questions about the HEART Act to ASI or to the Statewide Benefits office.

Thank you.